



### SUMMARY

In its Commercial Mobile Radio Service ("CMRS") rule making proceeding, the Commission has forbore from applying certain Title II statutory obligations to CMRS carriers. In this proceeding, the Commission considers further forbearance from certain Title II obligations for particular CMRS providers or classes of CMRS providers.

Nextel Communications, Inc. ("Nextel") supports further forbearance from Title II regulations for providers of Enhanced Specialized Mobile Radio ("ESMR") carriers. The Omnibus Budget Reconciliation Act of 1993, which amended the Communications Act of 1934, expressly authorizes "differential" regulation of CMRS providers and directs the Commission to consider whether the costs of complying with certain Title II requirements would outweigh their benefits to consumers. It also directs the Commission to consider whether forbearance would enhance future CMRS competition from a diversity of entities.

The Commission must carefully examine the rules discussed in this proceeding on a competitive, cost/benefit and consumer protection basis to assure that non-dominant, new CMRS entrant ESMR carriers are subjected to minimal regulatory burdens. The Title II provisions at issue are directed at protecting consumers with regard to the rates, charges and practices of carriers obligated to hold out service indifferently to the public. Further forbearance is appropriate for those without market power, particularly new entrants, that must offer high quality services at competitive

prices to gain market share. The Commission must use its forbearance discretion to achieve Congress' objective of tailoring CMRS regulation to promote a growing, diverse, competitive mobile communications marketplace.

As to the specific Title II provisions upon which the Commission seeks comment, Nextel concurs with the Commission's conclusion that no Title II obligations will apply to ESMR systems entitled to the three-year transition period to CMRS regulation until after August 10, 1996. After that time, Nextel supports forbearance for ESMR providers from the obligations of the Telephone Operator Consumer Improvement Act. There is no empirical evidence that mobile carriers can engage in the excesses these obligations address while compliance could be complicated, costly and burdensome. The Commission should also forbear from the informational tariff filing requirement of Section 228 concerning blocking of access to pay-per-call services. In addition, ESMR carriers should not be required to comply with Section 225 concerning Telecommunications Relay Service until compliance is technically feasible.

Finally, Nextel supports forbearance from all discretionary Title II provisions for "small" SMR providers with fewer than 5,000 subscribers nationwide. These carriers primarily provide dispatch services to which most of the Title II provisions are irrelevant or would produce minimal consumer benefits.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Further Forbearance from ) GN Docket No. 94-33  
Title II Regulation for Certain Types of )  
Commercial Mobile Radio Service )  
Providers )

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Nextel Communications, Inc. ("Nextel"), pursuant to Section 1.415 of the Commission's Rules, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making (the "NPRM") in the above-captioned proceeding.<sup>1/</sup>

On February 3, 1994, the Federal Communications Commission ("Commission") adopted its Second Report and Order in GN Docket No. 93-252,<sup>2/</sup> implementing the basic provisions of Sections 3(n) and 332(c) of the Communications Act (the "Act") as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").<sup>3/</sup> The Order established a comprehensive regulatory structure for the mobile services including a new category of

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<sup>1/</sup> FCC 94-101, released May 4, 1994.

<sup>2/</sup> Implementation of Sections 3(n) and 332(c) of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486, released March 30, 1994 (the "CMRS Order").

<sup>3/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(B), 107 Stat. 312, 392 (1993).

mobile communications providers -- "Commercial Mobile Radio Service" ("CMRS").<sup>4/</sup>

CMRS carriers are subject to the statutory obligations imposed on common carriers pursuant to Title II of the Act, except to the extent the FCC forbears from their application. The Budget Act authorizes the Commission to forbear from applying any of the Title II provisions to a particular CMRS provider or class of providers, except for Sections 201, 202 and 208.<sup>5/</sup> In the CMRS Order, the Commission forbore from applying Sections 203, 204, 205, 211, 212 and 214 of Title II of the Act to any service classified as CMRS. It determined that there is sufficient competition in the overall CMRS marketplace to ensure the lawfulness of CMRS rate levels, rate structures and service terms and conditions without application of these burdensome Title II obligations, including tariff filings by CMRS carriers.<sup>6/</sup> It declined, however, to forbear from the other "discretionary" Title II obligations for some or all CMRS providers. The Commission stated that it would consider additional relief for CMRS carriers in a further rule making under the Budget Act's criteria for forbearance from Title II regulation.

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<sup>4/</sup> Congress defined a CMRS provider as one who provides interconnected mobile telecommunications service to the public (or a substantial portion thereof) for profit. CMRS services are subject to Title II of the Act as a common carrier service.

<sup>5/</sup> Section 201 requires common carriers to provide service upon reasonable request and upon reasonable terms, and to interconnect with other carriers upon order by the Commission. Section 202 forbids unjust or unreasonable discrimination. Section 208 provides for the filing of complaints to enforce these and any other Title II obligations.

<sup>6/</sup> CMRS Order at paras. 135-54, 173-80.

This proceeding initiates that rule making. It seeks to tailor forbearance policies to market conditions and the public interest by seeking comment on whether there are types of CMRS providers that merit further forbearance from the remaining Title II requirements.<sup>7/</sup> Accordingly, Nextel respectfully provides its comments concerning further forbearance from these Title II requirements for existing Part 90 private land mobile radio Enhanced Specialized Mobile Radio ("ESMR") licensees that are being reclassified as CMRS providers. As the NPRM states, these entities will not be subject to any provision of Title II before August 10, 1996.<sup>8/</sup> Thus, Nextel's comments primarily address forbearance from Title II provisions after that date for these reclassified Part 90 carriers.

Nextel supports further forbearance from Title II regulations for ESMR carriers with no market power.<sup>9/</sup> The Budget Act expressly stated that "differential" regulation of CMRS providers is permissible and directed the Commission to consider whether the

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<sup>7/</sup> The NPRM considers forbearance from the following sections of the Act: Sections 213, 215, 218, 219, 220, 221, 223, 225, 226, 227 and 228.

<sup>8/</sup> NPRM at para. 3. Licensees subject to the transition period can engage in system expansion, including modifications or acquisitions of additional licenses in the same service. Licensees whose initial authorizations were granted after the August 10, 1993 cut-off for transition period eligibility will, however, be subject to Title II common carrier regulation upon the effective date of the Commission's CMRS rules.

<sup>9/</sup> Nextel uses the term "ESMR" throughout this pleading to refer to mobile communications systems licensed on SMR or other private radio frequencies employing digital technology in a wide-area multiple base station configuration and providing high capacity mobile telephone services.

costs of complying with certain Title II requirements would outweigh their benefits to consumers and whether further forbearance would enhance future CMRS competition from a diversity of entities.<sup>10/</sup> In short, the Budget Act requires that the Commission assess both actual and potential competition among providers of similar or substitutable services and minimize the regulatory burdens on carriers without market power.

## II. BACKGROUND

Nextel, established in 1987 as Fleet Call, Inc., is the largest provider of ESMR service and traditional SMR services in the country. ESMR services, also known as wide-area SMR services, provide customers with mobile telephone, paging and dispatch services all in a single handset along with improved clarity and reception and a host of enhanced features.<sup>11/</sup> Traditional SMR services, on the other hand, provide primarily fleet dispatch services.

Last month, Nextel initiated full commercial operation of its first ESMR service in Los Angeles. Nextel will expand its ESMR service to Northern California, including the San Francisco metropolitan area and the Central Valley by the third quarter of this year. By the end of 1996, Nextel intends to provide ESMR

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<sup>10/</sup> H.R. Conf. Rep. No. 103-102, 103rd Cong., 1st Sess. 491 (1993) Conference Report). See also Section 332(c)(1)(A) of the Act.

<sup>11/</sup> See In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533, recon. den., 6 FCC Rcd 6989 (1991).

services to customers in 45 of the 50 largest wireless communications markets in the U.S.

Created and developed by Nextel at a cost of over one billion dollars, ESMR makes possible an advanced mobile communications system capable of providing mobile telephone service comparable to that currently provided by the cellular industry, as well as private network dispatch, paging and mobile data services. Nextel's pioneering work in bringing ESMR service to the public provides the first real competitive choice in ten years to the duopoly cellular carriers -- although at this point in time they are completely unequal in terms of market penetration and customer base and, therefore, competitive significance.<sup>12/</sup>

Accordingly, the Commission must carefully examine not only the rules discussed in the NPRM, but future rules -- whether the result of new legislation or additional development of the CMRS regulatory framework -- on a competitive, cost/benefit and consumer protection basis to assure that non-dominant, new CMRS entrant ESMR carriers are subjected to minimal regulatory burdens. The Title II provisions at issue herein are directed at protecting consumers with regard to the rates, charges and practices of carriers obligated to hold out service indifferently to the public. Further

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<sup>12/</sup> Cellular service is available in every market in the country -- large or small -- and currently serves more than 16 million domestic customers. The first ESMR system commenced full commercial service only last month and, while initial sales are impressive, the entire ESMR industry at this time serves less than 5,000 customers. In short, Nextel, and ESMR licensees overall, have no market power and will serve as the first threat to the market power held by the cellular industry.

forbearance is appropriate for those without market power, particularly new entrants, that must offer high quality services at competitive prices to gain market share. In the long run, maximum consumer choices and benefits will be achieved through the Commission's careful use of its forbearance discretion to achieve Congress' objective of tailoring CMRS regulation to promote a growing, diverse, competitive mobile communications marketplace.

### III. DISCUSSION

Section 332(c)(1)(A) gives the Commission discretion to forbear from applying specific provisions of Title II to certain CMRS providers if it determines that:

- (i) enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations for or in connection with that services are just and reasonable and are not unjustly discriminatory;
- (ii) enforcement of such provision is not necessary for the protection of consumers; and
- (iii) specifying such provision is consistent with the public interest.

In applying this test, the NPRM asks commenters to address (1) how the statutory forbearance test and particularly the cost/benefit analysis of the last prong of the statutory test apply to each remaining non-forborne Title II provision, (2) how forbearance from the remaining Title II provisions would enhance future CMRS competition, (3) how Congressional intent underlying the Title II provision would be affected, (4) how forbearance for particular types of CMRS providers comports with regulatory symmetry and (5) what other factors or alternatives should be

considered in classifying CMRS for further forbearance purposes.<sup>13/</sup>

The Commission also solicits comments on alternative ways to define CMRS providers potentially eligible for additional forbearance.<sup>14/</sup> This inquiry focuses primarily on identifying "small" providers upon whose smaller revenue bases and other resources greater regulatory obligations would impose a heavier burden possibly justifying forbearance. The NPRM seeks comments on ways to define "small" for forbearance purposes including evaluation of the size of the business, number of channels, nature of the service or other similar criteria.<sup>15/</sup>

As discussed above, forbearance from some of the statutory provisions discussed in the NPRM is warranted not simply for "small" CMRS providers, but for non-dominant ESMR licensees and other new CMRS market entrants. The Commission should implement its forbearance discretion, consistent with the three-prong test of Section 332, to assure the development of a robustly competitive marketplace. This requires a case-by-case appraisal of regulations -- both existing and proposed -- to assure that the benefits of applying such obligations to particular classes of CMRS carriers achieves public interest benefits without imposing undue costs and hardships for the affected carriers, as detailed below.

In general, Nextel supports further forbearance from all but

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<sup>13/</sup> NPRM at paras. 8 and 9.

<sup>14/</sup> Id. at para. 32.

<sup>15/</sup> Id.

the statutorily-mandated Title II provisions for small CMRS providers that serve fewer than 5,000 subscribers nationwide.<sup>16/</sup> CMRS carriers with less than 5,000 subscribers nationwide typically do not provide the high capacity message telephone-type services that most of the Title II statutory provisions address. They more often serve primarily business customers who use the communications services to facilitate conduct of their primary business operations.

For example, all of the Title II provisions discussed in the NPRM can be forborne for traditional analog Specialized Mobile Radio ("SMR") stations which, even though classified as CMRS,<sup>17/</sup> primarily provide private network dispatch services to business customers. The Title II obligations discussed below are generally irrelevant to the services of such entities and the interests of their specialized customers and would impose unnecessary costs without countervailing benefits. In a number of cases, compliance may be technically infeasible as well.

In the following pages, Nextel offers its comments on further forbearance for ESMR providers from the specified Title II provisions.

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<sup>16/</sup> Determination of the 5,000 subscriber ceiling would include counting the subscribers of all affiliated entities. This proposed definition of "small" would not apply to one-way paging systems.

<sup>17/</sup> SMR systems that are interconnected with the public switched network are classified as CMRS; those that do not offer interconnect are classified as private mobile radio services. The majority of interconnected traditional SMR systems provide primarily dispatch services for which the subject Title II obligations would be largely irrelevant.

A. Section 210: Franks and Passes

Section 210 allows common carriers to issue franks and passes to their employees and to provide the Government with national defense-related service. Nextel concurs with the Commission's tentative conclusion that this provision eases potential restrictions on carriers and therefore that forbearance is not necessary for any particular class or group of CMRS providers.

B. Sections 213, 215, 218, 219 and 220: Reservations of Commission Authority

As the NPRM states, in the absence of further rule making, none of these statutory provisions impose any affirmative obligations on CMRS providers;<sup>18/</sup> therefore, the Commission need not forbear from their application to CMRS at this time. In any subsequent proceeding proposing to apply any affirmative obligations under these sections to CMRS providers, the Commission should consider their impact on specific CMRS providers and whether such requirements impose unwarranted costs or obligations without corresponding consumer benefits.<sup>19/</sup>

C. Section 223: Obscene, Harassing, Indecent Communications

Section 223 requires common carriers who collect payment for

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<sup>18/</sup> NPRM at para. 11.

<sup>19/</sup> In the CMRS Order, the Commission imposed accounting safeguards requiring separation of costs incurred by a local exchange carrier from those incurred by its CMRS affiliates, and accounting for local exchange carrier transactions with their CMRS affiliates. See CMRS Order at para. 218. Application of Section 220, which authorizes the Commission to prescribe the forms of accounts, records and memoranda to be kept by carriers, as well as depreciation rates, may be necessary to implement these accounting safeguards.

adult information providers using the carrier's services to impose "reverse blocking;" i.e., blocking access to obscene or indecent communications unless the subscriber previously requests such access. The reverse blocking obligation only applies if the carrier makes a voluntary business decision to bill and collect fees from its subscribers on behalf of the adult information provider.

Since only a voluntary business decision would subject the CMRS provider to Section 223 requirements, forbearance is not necessary. Collecting payments on behalf of a third party adult information provider is a non-common carrier business activity not integral to providing mobile communications services. A CMRS provider voluntarily undertaking these activities should view the costs of compliance with Section 223 as a cost of such activity. Nextel supports that Commission's conclusion that the important public interest in protecting minors articulated in Section 223 militates in favor of continuing to apply this section to CMRS licensees.

D. Section 225: Telecommunications Relay Services ("TRS")

In the CMRS Order, the Commission concluded that the record there afforded no basis for forbearing from Section 225 for CMRS.<sup>20/</sup> The NPRM asks for further information on whether the obligation to provide TRS and to contribute to the interstate TRS Fund should apply to all types of CMRS providers.

Nextel emphasizes its support for the provisions of Title IV

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<sup>20/</sup> NPRM at para. 14, citing CMRS Order at Para. 208.

of the American with Disabilities Act,21/ requiring all common carriers offering interstate or intrastate telephone voice service to provide services that enable persons with hearing and speech disabilities to communicate with hearing individuals through TRS. TRS permits persons with such disabilities to communicate by relaying conversations between hearing-impaired or speech-impaired people using text telephones and non-impaired persons using traditional telephones. The TRS rules promote consumer access to the public switched network and thereby support the achievement of universal service. The public interest is served by enabling Telecommunications Devices for the Deaf ("TDDs") to operate on digital wireless networks using TRS facilities thereby permitting hearing-impaired and speech-impaired individuals access to advanced wireless communications networks.

In Nextel's view, the choices available to CMRS carriers for offering TRS (e.g., individually, or by a designated provider including FCC certified state TRS programs) provide sufficiently flexible alternatives that new entrant ESMR providers will not be unduly burdened by TRS obligations. Similarly, contribution to the interstate TRS Fund helps to maintain reasonable rates while not being unduly burdensome -- particularly since under the current formula new entrants would have to contribute only \$100 per year

until their yearly gross interstate revenues exceed \$333,333.22/

Nextel has previously informed the Commission's staff of the technical obstacles to offering TRS on ESMR systems using Motorola Integrated Radio System ("MIRS") digital transmission technology.23/ There are two problems. First, TDDs produced today cannot technically interface with Nextel's digital MIRS infrastructure (the few TDD devices that work today on cellular systems operate through an analog "acoustic coupling" that will not function on a fully digital wireless technology). This means that a TDD used on Nextel's ESMR service will have to be modified to connect to the Nextel handset via an RS-232 cable providing a direct digital input for the TDD into Nextel's digital system. The second problem is that Nextel will not have digital data capability on its ESMR systems to carry TDD-involved communications until sometime in 1995.

Nextel is planning the necessary modifications of its networks and handsets to offer TRS. As noted above, changes will also have to be made to TDDs by the TDD manufacturers to make them compatible with MIRS technology. Nextel anticipates that these changes can be

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22/ Nextel questions, however, how a determination of gross interstate revenues would be applied, if at all, for services such as private network dispatch in which a single call may generate both intrastate and interstate communications but no separable interstate revenue. Such issues should be resolvable through discussions between affected carriers and the TRS Fund administrator, the National Exchange Carrier Association, with referral to the Commission if a consensus cannot reasonably be attained.

23/ See Nextel ex parte letter from R. Foosaner to G. Vaughan, dated Jan. 13, 1994.

implemented within a time frame that should permit TRS service with compatible TDDs to be initiated after August 10, 1996 -- the date at which Title II regulations become effective for reclassified Part 90 carriers. Given the fact, however, that MIRS is a newly implemented technology, and that the first ESMR system began full commercial service only a few months ago, Nextel believes that ESMR operators should have an additional six months after August 10, 1996 to comply with Section 225. Thus, Nextel supports application of Section 225 to reclassified Part 90 ESMR carriers as of February 10, 1997.<sup>24/</sup>

E. Section 226: Operator Services

The Telephone Operator Consumer Services Improvement Act ("TOCSIA") protects consumers or transient users making interstate operator service calls from phones available to the public from unreasonably high rates and anti-competitive practices. TOCSIA regulates (1) operator service providers ("OSPs") -- who provide interstate services from phones available to the public; and (2) "aggregators" -- such as hotels that make telephones available to

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<sup>24/</sup> This time frame applies to initiation of TRS service on Nextel's ESMR systems placed in commercial service sufficiently in advance of February 10, 1997 to have phased in digital data communications capabilities. Nextel cannot be certain at this early point in implementing MIRS ESMR technology that it will have digital data capabilities on systems that may initiate service shortly before that date. While Nextel plans to offer MIRS in 45 of the 50 largest markets in the United States by the end of 1996, it may not initiate both voice and data services at initial system start-up in every market. In such cases, compliance with Section 225 could pose an undue and costly burden with minimal consumer benefits for new systems with few subscribers in the early stages of commercial service. Nextel proposes that any such individual situations be handled on a case-by-case waiver basis permitting Section 225 compliance to be deferred until technically available.

the public or transient users of their premises and who use an OSP.<sup>25/</sup>

As Nextel understands it, in its normal operation as a CMRS ESMR provider, it would not be subject to TOCSIA requirements. A CMRS provider could become subject to TOCSIA as an aggregator, however, if it provides mobile telephones available for interstate calls to the public or to transient users of mobile premises.<sup>26/</sup> This might, for example, occur if a CMRS provider offered mobile phone service in rental cars. The CMRS provider could, in these circumstances, also be subject to the TOCSIA requirements for OSPs. In that case, the TOCSIA identification (or "branding"), disclosure and billing requirements would apply.<sup>27/</sup>

The issue of forbearance from TOCSIA applicability for CMRS providers received substantial comment in the CMRS Order.<sup>28/</sup> The Commission found that no commenter demonstrated how forbearing from application of TOCSIA to CMRS providers that are also either OSPs or aggregators would be consistent with the public interest -- given that TOCSIA is designed to protect consumers from unfair or deceptive practices by OSPs and to assure that they can make

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<sup>25/</sup> NPRM at para. 20.

<sup>26/</sup> See Petition for a Declaratory Ruling that GTE Airfone, GTE Railfone, and GTE Mobilnet are not Subject to the Telephone Operator Consumer Services Improvement Act of 1990, 8 FCC Rcd 6171 (1993) (the "GTE Declaratory Ruling"), recon. pending.

<sup>27/</sup> See Id., at paras. 21-22.

<sup>28/</sup> See CMRS Order at paras. 202-204 and 209-211.

informed choices in such calls.<sup>29/</sup> In this proceeding, the Commission seeks to determine whether forbearance from Section 226 for particular classes of CMRS is justified.<sup>30/</sup>

Nextel stresses that Congress enacted Section 226 in response to egregious consumer abuses by segments of the communications industry other than mobile communications providers.<sup>31/</sup> Enforcement of TOCSIA is not necessary to ensure reasonable charges and practices for mobile public phone services offered by ESMR providers that will be subject to Sections 201 and 202 of the Act requiring just and reasonable rates and barring unreasonably discriminatory rates, practices, classifications and services. ESMR providers, in particular, lack the market power to engage in unreasonably discriminatory behavior and have no history of the types of excessive anti-consumer practices that gave rise to TOCSIA. On the contrary, as new market entrants, ESMR providers must place a high priority on establishing positive consumer reputations to compete against the incumbent cellular carriers and to maximize subscriber growth to increase market share.

As discussed above, there is no empirical evidence to support

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<sup>29/</sup> Id. at para. 211.

<sup>30/</sup> This is important since the Common Carrier Bureau has concluded that providers of mobile telephone service for interstate calls in rental cars, and cellular pay telephones for interstate calls, are aggregators for TOCSIA purposes and may be OSPs as well. See GTE Declaratory Ruling, supra.

<sup>31/</sup> See Comments of GTE in GN Docket No. 93-252, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services; See also CMRS Order at paras. 202-203.

the conclusion that applying TOCSIA obligations to ESMR providers is necessary to protect consumers and to assure just and reasonable rates. The Commission should take this opportunity to demonstrate that it is not just mechanically applying common carrier obligations to all CMRS; on the contrary, it should demonstrate that it will not impose unnecessary regulatory burdens on non-dominant classes of CMRS providers where there is no basis under the Section 332 test to apply such obligations.<sup>32/</sup>

F. Section 227: Unsolicited Calls and Facsimile Transmissions

This section of the Act protects residential telephone subscribers' privacy by banning the use of automated or prerecorded telephone calls, and unsolicited faxes, unless the receiving party consents thereto. It primarily applies to telemarketing that is typically not a CMRS activity. Nextel does not oppose application of Section 227 to ESMR providers at the end of the statutory transition period of August 10, 1996.

G. Section 228: Pay-Per-Call Services

Section 228 implements obligations under the Telephone Disclosure and Dispute Resolution Act ("TDDRA") which are imposed on LECs, interexchange carriers and common carriers concerning pay-per-call services, typically known as audiotext or "900" services.

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<sup>32/</sup> The Commission should resist the temptation to apply regulations promulgated for specific abuses by OSPs in a fixed wireline environment to the evolving mobile communications marketplace without any evidence that they are needed to protect consumers of mobile communications services. Competition is the best approach to create market discipline and assure competitive choices for transient users of publicly available mobile telephones.

Most of Section 228's requirements fall on interexchange carriers who assign a 900 number to a pay-per-call service. Local exchange carriers are obligated to offer subscribers an option to block access to 900 pay-per-call services and must tariff the terms and conditions for such blocking.<sup>33/</sup>

To the extent ESMR carriers are considered co-carriers with the local exchange, Nextel does not oppose applying the same obligation to permit subscribers to block access to 900 services where technically feasible. However, since the Commission has forborne tariff filing obligations for all CMRS providers, it should similarly forbear from tariff filings for 900 blocking capability. ESMR carriers are likely to block 900 service regardless of Section 228 and will inform their customers at sign-up and upon request for access to such service. Accordingly, the tariff filing obligation would impose unnecessary costs on new entrants without any real consumer protection benefits.<sup>34/</sup>

#### IV. CONCLUSION

The Budget Act provides the Commission with discretion to forbear from applying nearly all of the Title II common carrier statutory obligations to CMRS licensees to the extent such

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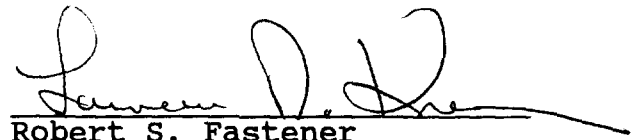
<sup>33/</sup> NPRM at para. 28. Section 228 also prevents common carriers from charging for "800" information services, restricts their charges for collect information services and bars them from disconnecting or interrupting service to a subscriber that fails to remit its pay-per-call charges where the common carrier bills and collects such charges.

<sup>34/</sup> Other requirements of Section 228 that would apply to CMRS carriers who bill and collect for 900 services can be foreseen by any ESMR provider that enters into such agreements with information providers.

provisions are not needed to assure just and reasonable rates or to protect consumers. Congress intended that the Commission utilize this discretion to foster vigorous and fair competition among CMRS providers and to minimize the burden of complying with new CMRS regulations for reclassified private land mobile licensees. Therefore, for the reasons discussed above, Nextel supports further forbearance from Title II obligations for ESMR providers and for small SMR operators whenever such obligations impose undue costs and burdensome requirements without countervailing public interest and consumer protection benefits.

Respectfully submitted,

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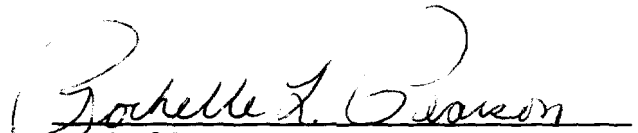
Dated: June 27, 1994

## CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 27th day of June, 1994, I caused a copy of the attached Comments of Nextel Communications, Inc., to be served by hand delivery or first-class mail, postage prepaid to the following:

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